Revenue (1948), Department.

SERIES.

G.O. No. 2350

Dated 28.9.1948

[Despatch Abstract.]

Tax - Madras General Sales Tax Act, 1939 - Section 5(v) - Tea containers (Tea chests) exemption from tax - Representation of United Planters' Association of Southern India - Orders passed.

United Planters' Association,
of Southern India, Coonoor,
6th April 1948.

No. JM.22.

To

The Hon'ble Finance Minister in the Government of Madras,
Fort St. George, Madras.

Sub:- Madras General Sales Tax Act.

Sir,

I am directed to bring to your kind notice a matter that is causing some concern to the South India tea industry as a result of the operation of the abovementioned Act.

Under section 5(v) of the Act, "the sale of tea grown by the seller or grown on any land in which he has an interest, whether as owner, usufructory mortgagee, tenant or otherwise shall be exempt from taxation if the sale is for delivery outside the Province and delivery is actually so made". This exemption, as you will kindly rember, was *burden on the consumer expressed* expressly provided by the Select Committee in order to reduce the burden on the consumer of tea which in this country has long been regarded as the "poor man's drink", and also to prevent the Madras Grower from being placed in an unfair position as regards the tea export trade and sale of tea to Indian consumers outside Madras Province. Cases have now come to my notice where sales tax officers have exempted the tea delivered outside this Province, but assessed the containers (tea chests) to sales tax, My Association feels that it could not have been the intention of the Legislature to exempt the tea but assess the container, because it is unusual and unfair to regard the value of the container as separate and distinct from the value of the tea for tax purposes.

My Association will be grateful if Government will be pleased to give consideration to this matter and make early provision for exempting from sales tax the turnover in respect of containers of tea despatched outside the Province.

Yours faithfully,

x x x x
Secretary.

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.M. KOTHARI, M.L.A.

Oriental Buildings,
Armenian Street, Madras.
April 8, 1949.

Dear Mr. Gopala Reddi,

Madras General Sales Tax Act.

I understand that the Secretary of the United Planters' Association of Southern India, Glenview, Coonoor, Nilgiris has written to you a letter No. JM.22 dated the 6th April 1948 in connection with the tea chests to be exempted from sales tax. In spite of the above, for your ready reference, I am enclosing herewith a copy of the above said letter.

If I remember aright in the discussions of the Select Committee, it was definitely decided to exempt tea both for exports and also that which is sold outside Madras Presidency, from sales tax. As you are aware no tea can be sold unless it is packed in the tea chests. I hence feel that the above said

exemption is both for tea and its tea chests. The view which the Sales Tax Officers are taking as regards the non-exemption of tea chests is beyond what the intention of the Act is, and also what we discussed in the Select Committee. Moreover, it will be very difficult for the Sales Tax Officers to find out the value of tea chests, the price of which varies from day to day and also in respect of quality.

For fough calculations, I may note that the crop of whole of South India including Travancore and Mysore States in tea, comes to 100 million pounds (last year it was only 94 million pounds) and each tea takes 100 pounds, and hence for the whole crop of Travancore, Mysore and the Madras Province, the tea chests required would be one million chests. Taking the crop of Travancore and Mysore on a very conservative basis at 50 million pounds, Travancore and Mysore may use half a million chests. The chests thus required for the Madras Presidency would be 5 lakhs, which on an average of Rs. 8/- per chests, comes to 40 lakhs of rupees. Thus sales tax at 1½% comes to Rs. 60,000/-. The cost of the chests varies from Estate to an Estate, from day to day and also depends upon the quality. Hence it will be very difficult for the Sales Tax Officers to arrive at a reasonable value of tea chests. I also feel that to recover sales tax of about Rs. 60,000/- the cost of production will be very heavy. In view of the above, I have to request you to consider this view point, leaving aside the discussions that we had in the Select Committee and also as regards the interpretation of the Act, and let me hope you will please pass the necessary instructions to the Sales Tax Officers, to exempt tea chests from sales tax.

Awaiting to hear from you at your early convenience and in the meanwhile with regards,

Yours sincerely,

C.M. Kothari.

To

The Hon'ble Mr. B. Gopala Reddi,
Minister for Finance, Government of Madras, Madras.

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REVENUE DEPARTMENT
Subject.

Madras General Sales Tax Act, 1939 - Section 5 - Tea - Sales for delivery outside the Province - Tea containers - Liability to tax - Instructions.

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Ref. T.No. 3134/48-2.

Madras. Dated the 5th July 1948.

From
Khan Sahib Md. Sultan Mohiuddin Hussain Sahib Bahadur, B.A.
Additional Joint Secretary, Board of Revenue.
S. Ranganathan, Esq., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes.

Read:-Government Endorsement No. 21829/N/48-1 dated 16.4.48.
From the Deputy Commissioner (Central), L.Dis.691/48 dated 27.5.1948.

Reference:-

The Board submits the following remarks:-

Under section 5(v) of the Act exemption is allowed

only to the sale of tea for delivery outside the Province and if delivery is actually so effected. This does not mean that the containers in whihh tea is packed should also be exempted from tax. The estates or exporters do not generally manufacture containers but buy and supply them for packing. Such containers when sold empty are liable to tax and there is no reason why they should not be taxed when filled with tea or any other material. The turn over of containers alone works out to a large amount in the case of big exporters and estates and the Government cannot lose the tax derivable out of such transaction The turn over of such packing materials is liable to tax under section 2(h) of the Act and the Board considers that there is no case for granting exemption.

x x x x

For Joint Secretary.

To

The Secretary to the Government, Revenue Department, Madras.

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GOVERNMENT OF MADRAS.
Abstract.

Tax - Madras General Sales Tax Act, 1939 - Section 5(v) - Tea containers (Tea Chests) exemption from tax - Representation of United Planters' Association of Southern India - Orders passed.

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REVENUE DEPARTMENT

G.O. Ms. No. 2350. Dated the 28th September 1948.
Read:-

From the Secretary, United Planters' Association of Southern India, letter No. JM.22 dated 6.4.1948.
Government Endorsement No. 21829/ N/48-1, Revenue, dated 16.4.1948.
From the Board of Revenue, Ref. T.No. 3134/48-2 dated 5.7.1948.

Order:-

The Government consider that the exemption from sales tax granted in section 5(v) of the Madras General Sales Tax Act, 1939 for the sale of tea cannot extend to the containers (i.e.) tea chests.

(By Order of His Excellency the Governor).

V.K. Rao,
Deputy Secretary to Government.

To

The Secretary, United Planters' Association of Southern India, Coonoor, Nilgiris.

Copy to the Board of Revenue.

Copy to Mr. C.M. Kothari, M.L.A., Oriental Buildings, Armenian Street, Madras with reference to his letter dated 8.4.1948.

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/True copy/

AN 5/6/52.

Office Assistant,

Madras Record Office.

REVENUE DEPARTMENT

Tax - The Madras General Sales Tax Act, 1939 - Section 5 - Tea - Sales for delivery outside the Province - Tea container exemption from tax - Representation of United Planters' Association of Southern India.

From the Secretary, United Planters' Association of Southern India, letter dated 6.4.1948.
Endorsement No. 21829/N/48-1, Revenue, dated 11.8.1948.
From the Board of Revenue, Ref.T.No. 3134/48-2 dated 5.7.48.

The Secretary, United Planters' Association of Southern India has represented to the Government that while exports of tea are exempt from tax the estate owners are being assessed to sales tax in respect of the turnover of the containers (i.e.) tea chests. He has requested that turnover in respect of containers of tea may also be exempted from sales tax. Mr. Kothari's letter on the same subject at pages 3-4 c.f. may be perused.

The Board of Revenue which was consulted in the matter considers that there is no valid reason for exempting the turnover of the tea chests from sales tax. Please see its report at page 7 c.f. The Board's view that sales tax should be levied in respect of the turnover representing the cost of the container would be correct if the exporter charges for the containers separately. If an exporter undertakes to supply 100 lbs. of tea at a specified price, say Rs. 200 and if he does not specifically mention that out of this sum Rs. 8/- will represent the cost of the container, it seems doubtful whether it would be legal to levy sales tax in respect of the turnover representing the price of the containers. Legal may see for remarks on this point. Finance may also see.

The exemption granted in section 5(v) cannot be extend to the container.

V.K.
21.7.

LEGAL DEPARTMENT

This is a matter in which one can reasonably argue both ways. It can be contended that as under section 5(v) only the tea has been in clear terms exempted, we should not go further than the words of the Act absolutely require and that therefore the container is not exempted. It can be further argued that as rule 5(i)(g)(ii) makes explicit provision to exempt packing materials where packing materials are separately charged for, the exemption must be deemed not to apply to transactions where packing charges are not separately exhibited. On the other hand, there is the general rule that when the law permits something to be done, it also permits the doing of something that is necessarily incidental to such performance. The sale of the chest is only incidental to the sale of the tea and in fact inseparable from it; and if we have regard to the substance of it, which is the proper way of looking at the matter, the transaction must be treated as a sale only of the tea and of nothing more. The cost of the chest would no doubt go into the price of the tea; but still it is essentially the tea that is sold. The possible argument about the loss of revenue would lose

its force when it is noticed that the trade can obtain exemption under ruel 5 (1)(g)(ii) by merely including in the invoice the price of the chest as a separate item.

x x x
5.8.

FINANCE DEPARTMENT

The Board of Revenue is against the grant of exemption from sales tax in respect of the containers in which the tea is packed for the reason that, if such containers are liable to tax when empty, there is no reason why they should not be taxedwhen filled with tea or any other material. Revenue consider that the exemption granted in section 5(v) of the Madras General Sales Tax Act cannot extend to the container. They apparently agree with the Board's view. Legal, however, doubt the validity of the interpretatic at 'X' above. They also point out that the trade can obtain exemption by merely including in the invoice the price of the chest as a separate item. In view of this, Finance may agree with Legal that the containers of tea despatched outside the Province may be exempted from sales tax.

2. As this is a matter involving substantial loss of revenue (Rs. 60,000 per annum), Revenue will no doubt take orders in circulation to H.M. Finance.

x x x
12.8..

I am afraid I cannot accept the argument of Legal at 'A' above. What is exempt under rule 5(1)(g)(ii) is"charges for packing and delivery and other such services". I would lay stress on the wor "Such Services" and point out that the exemption is in respect of a Service and not in respect of an article. Hence the Board says that the containers have a specific value over and above the value of the tea. These containers cannot be treated on the same footing as newspaper wrapping or cardboard boxes which have no value when once the packing undone. I would therefore agree with Revenue that the tax is leviable on thevalue of the containers.

T.N.S.R.
13.8.48.

REVENUE DEPARTMENT

Please see the notes from page 1 ante,

2. Legal may perhaps see the fi le again with reference to the Finance Secretary's views above, before orders are obtained in circulation.

Secretary too may like to see.

V.K.
20.8.

S.Y.K.
25.8.48.

LEGAL DEPARTMENT

On the view expressed by the Finance Secretary

may be
two or three observations/made :- (1) On the basis that his reasoning is unexceptionable, it still meets only one of the contentions urged in support of a particular view; the others, even more cogent, rmmain; (2) The stress laid on the word "Services" by the Finance Secretary does not materially affect the argument. Certain services cannot be rendered without the use of some material which has a money value. If for instance a patient with a broken arm goes to a Doctor and he applies some medicines to the injured part and puts the arm in splints, and bandage, the payment made to the Doctor would ordinarily be regarded as a payment for his services, though such services could not have been rendered without using a certain amount of cotton wool and certain lengths of splint, etc. Similarly the service of packigg cannot be rendered without the use of some material, may be newspaper, brown paper, cardboard box, dealwood box or whatever it is. The test would be not whether the packing material used has any salvage value but whether the service of packing could be rendered without the material. It is hardly necessary to add that the material used for packing must be appropriate to the article packed.

In this connection, the following observations which occur in an English case (Whaite V. The Lancashire and Yorkshire Railway Company - 1874 L.R. 9 Exch. 67 at pages 60 and 70) are of interest:-

"Bramwell, B. I think this waggon with its waggon with its contents was a "package" within the meaning of the Act. Although one would not commonly describe it in that way, yet, looking at the object and purpose of the Act, I think we are not only entitled, but compelled to say that it was a "package or parcel" within the section".

"Cleasby, B. ** * * It would be absurd to say that the waggon was too large to be a package; plainly, size cannot be a criterion".

In the result, there are not sufficient grounds for modifying the view expressed in the note of this Department at nages 2 and 3 above.

x x x
31.8.

REVENUE DEPARTMENT

Under section 5(v) of the Madras General Sales Tax Act, 1939, the sale of tea grown by the seller or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee tenant or otherwise is exempt from tax if the sale is for delivery outside the Province and delivery is actually so made. The United Planters' Association of South India has brought to the notice of the Government that while the sales of tea for export are exempted, sales tax is being levied on the turnover representing the value of the 'containers' i.e. the tea chests. The Association has requested that sales tax should not be levied in respect of this turnover. In its report at page 7 c.f. the Board is of the view that the containers are not exempt from tax. This Department also considered that the exemption granted in section 5(v) cannot extend to the container. Legal, while doubting the correctness of this view, pointed out that the trade can obtain exemption under rule 5(1)(g)(ii) by merely including in the invoice the price of the chest as a separate item. Finance did not agree with Legal on this point. They agreed with Revenue that sales tax is leviable on the value of containers. Legal have reexamined the question and for the reasons stated in their note at pages 4-5 ante, they consider that there are not sufficient grounds for modifying their earlier view namely that the value of the containers is not liable to sales tax.

2. The file may now be circulated to Hon'ble Minister (Finance) for orders whether the Legal Department's view will be accepted and the Board informed that the turnover representing the value of the containers should not be assessed to sales tax.

On the whole, we may accept the Legal view.

x x x
10.9.48.

K.Rao,
11.9.48.

S.Y.K.
16.XI.9.

H.M. (Finance). Let us levy the tax. Let them go to ~~Government~~ Court and establish their cases.

B.G.R.
20.9.

H.M. (Agriculture). All right.
22.9.

Please see the orders in circulation at page 6 ante.

2. A draft order is submitted for approval.

x x
25.9.48.

V.K. Rao,
27.9.48.

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/True copy/

Office Assistant,
Madras Record Office.

k.y.s.